

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11239 of 1998

with

SPECIAL CIVIL APPLICATION 11240 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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REGIONAL PROVIDENT FUND                      COMMISSIONER

Versus

B M MEHTA

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Appearance:

MR BHARAT T RAO for Petitioner

MR IS SUPEHIA for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 07/04/99

ORAL JUDGEMENT

Both these petitions are filed against orders passed by the Central Administrative Tribunal, Ahmedabad Bench ('CAT' for short) on November 29, 1998.

2. Respondent in each petition was the original applicant before CAT. Both of them sought relief against order of suspension passed against them. CAT after hearing the parties, granted interim relief of reinstatement forthwith observing that it did not see any justification to keep the applicants under suspension any further. In O.A. No.198 of 1998, the Tribunal observed;

"Therefore, we see no justification to keep the applicant under suspension any further. The applicant can be posted in any non-sensitive post in which he is not likely to interfere with the inquiry or tamper with the documents. We allow the prayer for interim relief. We, therefore, direct that the applicant be reinstated forthwith on receipt of a copy of this order."

A similar order was passed in O.A. No.199 of 1998.

3. The above orders were challenged by Railway Administration by filing these petitions. On December, 30, 1998, the petitions came up before us. We issued notice as to admission as well as final hearing returnable on March 1, 1999. Ad-interim stay against orders passed by CAT was also granted. Today, the matters are called out for admission as well as final hearing, as per the the above order. We have heard Mr. Rao, learned counsel for the petitioner and Mr. Supehia, learned counsel for the respondents.

4. Mr. Rao submitted that the orders passed by CAT are contrary to law and there is an error of law as well as of jurisdiction on the part of CAT. He submitted that, on the one hand, it granted interim stay against proceeding with the inquiry, and on the other hand, CAT passed a mandatory order directing the administration to reinstate the applicants forthwith on receipt of the copy of the orders. He, therefore, submitted that there is inconsistency in the orders passed by CAT and such orders could not have been made. He also submitted that there is an error apparent on the face of the record on the part of CAT in not taking into account the material fact that the applicants had obtained interim relief against proceeding with the inquiry. Thus, it was not the default on the part of the department. Though the department is willing to proceed with the inquiry and complete it, it could not do so as interim relief is obtained by the delinquents. Mr. Rao made a statement at the Bar that, if stay is vacated by this Court (or by CAT), the department is ready to complete the inquiry

within a stipulated period, say, within a period of about two months. He, therefore, submitted that the petitions deserve to be allowed by quashing and setting aside the orders of reinstatement of the applicants and also by vacating interim relief against inquiry which has been granted by CAT and by permitting the department to complete the inquiry expeditiously.

5. Mr. Rao also submitted that serious allegations have been levelled against both the applicants. Criminal case is pending in which hundreds of witnesses are to be examined. It has taken long time and when the department wants to dispose of departmental proceedings, it is proper to allow to do so.

6. Mr. Supehia, on the other hand, supported the order passed by CAT. According to him, it cannot be said that by granting interim relief, an error of law can be said to have been committed by CAT and such orders may not be interfered with in exercise of power under Article 226 or 227 of the Constitution by this Court. The counsel submitted that a relevant and germane consideration was taken into account by CAT that the applicants were placed under suspension and the said suspension continued for more than two decades. It is settled law that a suspension which is preventive measure, cannot be continued unreasonably long. If, taking into account the fact that the applicants were placed under suspension for a number of years, and a relief of reinstatement is granted, it cannot be said that such a relief could not have been granted by CAT and that there was an error of jurisdiction. Mr. Supehia argued that the order staying departmental inquiry was passed by CAT as early as on March 19, 1998. The said order was never challenged by the department by filing a petition in this Court. It is do doubt true that a prayer is made in the petition to vacate interim relief against proceeding with the inquiry granted by the Tribunal, but the order granting stay was passed before nine months of filing the petition and only after an order directing the department to reinstate the applicants was made by CAT, that the department has come forward. One of the reliefs prayed in the petition was to vacate interim relief against proceeding with the inquiry. He also submitted that the orders impugned in the petitions were ad-interim in nature passed on November 29, 1998. It is true that the said orders are challenged in the present proceedings and they are stayed by this Court on December 30, 1998. But that fact was not brought to the notice of CAT and on 1st January, 1999, the date on which matters were adjourned, CAT

continued interim relief. He, therefore, submitted that the present petitions have become infructuous. If the petitioner is aggrieved by subsequent orders of January 1, 1999, proper course open to the administration is to file fresh petitions against those orders. On merits also, he submitted that there is suppression of facts on the part of the petitioner in making certain allegations which were not made in the statement of allegations served upon the delinquents.

7. So far as merits of the matters are concerned, in our opinion, it would not be advisable to enter into the controversy as the proceedings are pending at both the ends, namely, in a competent Criminal Court as also before the department. The questions, therefore, remain about proceeding with the inquiry and reinstatement of applicants, as ordered by CAT.

8. Regarding stay against proceeding with the inquiry, Mr. Supehia contended that the order was passed on 19th March, 1998. Since then, the inquiry is not proceeded further. In the present petitions, a prayer is made to vacate interim relief against proceeding with the inquiry, but even the said order dated 19th March, 1998 is not made part of the petition. In our opinion, therefore, it would be appropriate, if we refrain from interfering with the said order in the present proceedings and leave the matter there by observing that it is open to the petitioner to raise the said contention before CAT where the matters are pending.

9. We may, however, state that as observed by the Hon'ble Supreme Court in State of Rajasthan v. B.K. Meena, A.I.R. 1997 SC 13 and in Depot Manager, APSRTC v. Mohmad Yousuf Minya, A.I.R. 1997 SC 2232, ordinarily departmental proceedings must be over as expeditiously as possible and they should not be stayed for unreasonably long till criminal trial is over.

10. In B.K. Meena, the Honourable Apex Court observed :

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the

criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed."(emphasis supplied)

11. Recently, in *Kirankumar R. Baxi v. United Commercial Bank*, (1998) 1 GLR, 256, following the above decisions and upholding the action of the Bank in proceeding further with the departmental inquiry, speaking for the Division Bench, one of us (C.K. Thakkar, J.) stated :

"From the above cases, it is clear that not only both the proceedings can simultaneously be taken but in the opinion of the Apex Court, ordinarily departmental proceedings must be concluded as expeditiously as possible and they should not be stayed on the ground of pendency of criminal trial. Considering the ambit and scope, nature of allegations; mode of enquiry, object underlying such proceedings; standard of proof, burden of proof; order to be passed; etc., departmental proceedings should not be stayed merely on the ground of pendency of criminal prosecution."( Emphasis supplied)

12. Therefore, by keeping the question about vacating interim relief against proceeding with inquiry open, we propose to consider the second point. So far as interim relief against suspension is concerned, in our opinion, CAT was not at all justified in granting reinstatement. On the one hand, CAT granted interim relief against proceeding with the inquiry, though inquiry was going on and the department was prepared to complete it. Even before this Court a statement was made by Mr. Rao that the authorities will complete departmental proceedings within a stipulated period. CAT granted a relief prayed by the delinquents of staying the inquiry, and on the other hand, granted mandatory relief of reinstatement. In our opinion, such a relief could not have been granted

by CAT. We are also of the view that, in the facts and circumstances of the case, this was not a fit case to grant relief of a mandatory nature at an interlocutory stage when criminal prosecution was pending before a competent Court and inquiry was also not over and the department was willing to go on with the inquiry. It is also pertinent to note that when ad-interim relief was granted, directing the department to reinstate the delinquents and this Court stayed the order passed by CAT, no further action could have been taken. Mr. Supehia submitted that on 1st January, 1999, the attention of CAT was not invited to an order passed by this Court on December 30, 1998 and interim relief was continued. Be that as it may. The fact remains that an order of a mandatory nature at an interlocutory stage was passed by CAT in November 1998 which was stayed by this Court. In these circumstances, in our opinion, no effect can be given to a subsequent order passed by CAT on 1st January, 1999.

13. For the foregoing reasons, in our view, both the Special Civil Applications deserve to be partly allowed and are, accordingly, allowed. So far as the order passed interfering with action of suspension passed by the department and directing reinstatement of the respondents herein is concerned, it is set aside. Regarding pendency of inquiry and completion thereof, it is open to the petitioners to move CAT for appropriate relief. Petitions are accordingly disposed of. In the facts and circumstances of the case, no costs.

It was stated by Mr. Supehia that, after the orders were passed by CAT, the respondents were actually reinstated and they have worked for some time. They are, therefore, entitled to salary for that period. It is open to the learned counsel for the respondents to draw the attention of CAT when the matters will be taken up for hearing.

[ C.K. THAKKAR, J. ]

[ A.L. DAVE, J. ]

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